

REMARKS

Thorough examination of the application is appreciated.

Claims 1-19 are pending. In accordance with the Office Action (OA) the pending claims stand rejected in their entirety as follows:

I. Claims 1, 4, 7-8, 14-17 stand rejected under 35 U.S.C. 103(a) as unpatentable over U.S. Patent 4,889,739 ("Powers").

II. Claims 1-4, 7-8 and 14-17 stand rejected under 35 U.S.C. 103(a) as unpatentable over U.S. 7,029,717 ("Ojima") in view of Powers.

III. Claims 1, 3-20 stand rejected under 35 U.S.C. 103(a) as unpatentable over U.S. Patent 4,690,827 ("Kupper") in view of Powers.

IV. Claim 2 stand rejected under 35 U.S.C. 103(a) as unpatentable over Kupper in view of Powers and further over Ojima.

V. Claim 11 stand rejected under 35 U.S.C. 112, second paragraph.

Withdrawal of the rejections is respectfully requested for the following reasons.

To meet the burden of establishing a *prima facie* case, the U.S. Patent and Trademark Office must point out where each claimed element and limitation of the claims is found in the cited references. *Ex parte Blanc*, 13 USPQ2d 1383 (Bd. Pat. App. & Inter. 1989). "If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the propped modification." MPEP 2143.01 citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1983).

Applicants respectfully submit that the Office has not established the prime facie case of obviousness for the following reasons.

I. Claims 1, 4, 7, 8 and 14 -17 are patentable over Powers because the modifications to Powers, as proposed by the examiner, are unsatisfactory for the purposes disclosed in the cited reference.

The citrus juice beverage of the present disclosure has reduced sugar and calorie levels, when compared to whole citrus juices. As a consequence, the disclosed beverage is characterized by Brix levels, which are lower than traditional Brix levels of a whole juice, but retains the texture, taste, sensory and mouth feel characteristics of a whole juice. One of salient features of the disclosed beverage is the presence of a diluent in the final product.

Based on the foregoing, Claim 1 recites the following:

--a diluent to lower the given Brix level to between about 3.degree. and about 9.degree.

Brix; ...and

said beverage has a Brix level of between about 3.degree. and about 9.degree. Brix while having sensory and texture attributes comparable to those of said citrus juice component having its given Brix level. --

The examiner cites Powers and explicitly states that an "orange juice is typically not diluted to level under that found" in the present disclosure, as recited by Claim 1. OA, p. 2. last sentence. The examiner, however, contends that "it would have been obvious to dilute [single strength orange juice] more to extend the orange juice to provide more orange drink." The examiner's proposition is improper, with all due respect, because, if implemented, it would contradict the teaching of Powers.

In col. 6, lines 10-54 Powers teaches, among others, the following:

--An important characteristic of the feed juices of the present invention is their viscosity. Selection of the "right" viscosity for the feed juice has been found to be particularly critical to achieving a "more like hand-squeezed juice" texture for the ultimate orange juice product...

[f]eed juices of the present invention have relatively low viscosities. -- Emphasis added.

Power further teaches that

-- Another key characteristic of feed juices of the present invention is their level of sinking pulp. ... The level of sinking pulp has a particularly important effect on the viscosity of the feed juice. Generally, as the level of sinking pulp increases, the viscosity of the feed juice likewise increases. -- Col. 6, lines 55-68

Based on these two key characteristics, Powers teaches that an orange juice product with the lowest Brix level is about 11.8°. Col. 34, lines 56-63. This lowest Brix level, as taught by Powers, corresponds to the desired viscosity of the product.

Following the examiner's proposition, if one would further dilute a product of Powers, the product would have neither the desired viscosity nor the desired lowest Brix level. Adding a diluent to the disclosed product would lower the viscosity of the product as taught by Powers.

Furthermore, adding a diluent to the product of Powers would modify a Brix level, which, in addition to the viscosity, is taught by Powers as a key characteristic. Thus, a Brix level of at least 11.8° is critical to Powers. Brix is used in the food industry for measuring the approximate amount of sugars. For fruit juices, one degree of Brix is about 2% sugar by weight.

This usually correlates well with perceived sweetness. The minimal difference between the Brix level of the product of Claim 1 and that one of Powers is 2.8°, which translates into almost 6% of sugar. One can only think about a person suffering from diabetes to appreciate such a huge difference.

Consequently, one of ordinary skill in the art would not have any motivation to dilute the product of Powers as suggested by the Examiner, because Powers as a whole not only does not teach or suggest such a reduction, but the cited reference clearly teaches against it.

Accordingly, Claim 1 is patentable over Powers.

Claims 4, 7 and 8 depend upon Claim 1 and benefit therefrom.

Claim 14 recites a citrus juice comprising, among others, the following:

--a pulp component originating from a floating pulp of a citrus juice, the floating pulp being a source of a sinking pulp;

a sweetener which does not add a significant caloric load to the beverage; and said beverage has a Brix level of between about 3.degree and about 9.degree--

In contrast to Claim 14, Powers is silent about a floating pulp being a source of a sinking pulp. Furthermore, as discussed above, lowering the Brix level of Powers to have the product as recited by Claim 14 obvious, as suggested by the Examiner, would teach away from Powers as a whole and significantly modify the criticality of Power's teaching. Therefore, Powers does not provide one of ordinary skill in the art with any teaching, motivation or incentive to lower a Brix level so as to make the Brix level as recited by Claim 14 obvious. Accordingly, Claim 14 is patentable over Powers.

Claim 15 recites "a diluent to lower the given Brix level and to lower sugar or caloric levels of the citrus juice by as much as about a 70% reduction." As discussed in reference to Claim 1, a diluent is a salient feature of the present disclosure and allows a juice beverage to have about a 70% reduction of a sugar level while retaining all sensory qualities of comparable whole juices. Powers does not provide any motivation for one of ordinary skill to use a diluent and have the recited reduction of sugar levels. Thus, Claim 15 is patentable over Powers.

Based on the above, withdrawal and reconsideration of the 35 U.S.C. 103(a) rejection of claims 1, 4, 7, 8 and 14-15 are respectfully requested.

II. Claims 1-4, 7-8 and 14-17 stand rejected under 35 U.S.C. 103(a) as unpatentable over Ojima in view of Powers

Claim 1 recites, among others, the following:

-- from about 20 to about 80 weight percent of a citrus juice component, based upon the total weight of the juice beverage, said citrus juice component having a given Brix level of at least about 9.degree. Brix;

from about 3 to about 20 weight percent, based upon the total weight of the juice beverage, of a sinking pulp component originating from a citrus juice;

a diluent to lower the given Brix level to between about 3.degree. and about 9.degree.

Brix--

The examiner, referring to example 30 of Ojima, contends that Ojima discloses an orange juice drink having all of the recited limitations of claim 1 except for "the recitation of the Brix level of the juice drink... and the extend of sinking pulp in the juice." OA, paragraph bridging pp. 3 and 4.

The example 30 of Ojima is fully reproduced below:

--To 1 part of sucralose (powder) was added sodium succinate (powder) at the levels indicated in Table 30, and the mixture was made up to 100 parts with dextrin to give a sucralose-containing composition (powdery mixture). This composition was heated in an oven at 120.degree. C. for 1 hour and, then, tested for sweetness as in Example 1 to evaluate the thermal stability of sucralose. The results are shown in Table 30.

Level of addition (parts by weight) Sweetness Intensity Quality 0 (control) 2 2 0.001 (this invention) 3 4 0.01 (this invention) 4 4 0.1 (this invention) 4 4 1 (this invention) 4 4. It was found that whereas heating caused significant reductions in the intensity and quality of sweetness of sucralose in the absence of sodium succinate, these reductions were significantly inhibited when sodium succinate was formulated. The above results indicate that by causing sodium succinate to coexist with sucralose, both the intensity and quality of sweetness of sucralose can be remarkably stabilized.

Applicants cannot find the teaching of the weight of citrus juice components, sinking pulp and diluent, as recited by Claim 1 in Ojima in addition to the differences pointed out by the examiner. Powers does not teach the Brix level and a diluent. Accordingly, a combination of the cited references falls well short of the recited product of claim 1.

Since the proposed combination does not yield the resultant structure having all of the limitations, as recited by Claim 1, Applicant respectfully submit that the Office has failed to

establish a prima facie case of obviousness. Accordingly, Claim 1, is patentable over Ojima in view of Powers.

Claims 3, 4, 7 and 8 depend upon Claim 1 and are patentable over the proposed combination at least for the reason of their dependency upon a patentable independent claim.

Independent claims 14 and 15 each is patentable over Ojima in view of Powers at least for the same reasons as discussed above in reference to Claim 1.

Claims 16 and 17 depend upon claim 15 and benefit therefrom.

Withdrawal of the 35 U.S.C. 103(a) rejection of claims 1-4, 7, 8 and 14-17 is respectfully requested.

III. Claims 1, 3-19 stand rejected under 35 U.S.C. 103(a) as unpatentable over Kupper in view of Powers.

It is improper to combine references where one of the cited references teaches away from the proposed combination. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983).

As discussed above, Powers does not provide any incentive to dilute the disclosed citrus juice because it would critically distort the viscosity and Brix levels as taught by this reference. Regardless of what Kupper teaches, the resultant structure would have a diluted juice with impermissibly affected physical characteristics, if compared to the teaching of Powers. Accordingly, Kupper teaches away from the proposed combination and cannot be properly combined with Powers. As a consequence, independent claims 1, 14, 15, 18 and 19 are patentable over the proposed combination.

The rest of the rejected claims selectively depend upon the independent claims and are patentable over the proposed combination as well. Withdrawal of the 35 U.S.C. 103(a) rejections of claims 1 and 3-19 is respectfully requested.

IV. Claim 2 stand rejected under 35 U.S.C. 103(a) as unpatentable over Kupper in view of Powers and further over Ojima.

Claim 2 depends upon claim 1 and benefits from its patentability. Withdrawal of the rejection is respectfully requested.

V. Claim 11 stand rejected under 35 U.S.C. 112, second paragraph. Claim 11 has been amended to clarify the objected abbreviation "DV." DV means a daily value and its

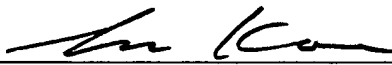
abbreviation, as appears in the specification AND IS recited in Claim 11, is the term of art. Withdrawal of the 35 U.S.C. 112, second paragraph is respectfully requested.

Conclusion

Based on all of the above, it is respectfully submitted that the present application is now in condition for allowance. Prompt and favorable action to this effect, and early passing of this application to issue, are respectfully solicited. However, should the Examiner have any comments, questions, suggestions or objections, the Examiner is respectfully requested to telephone the undersigned in order to facilitate reaching a resolution of any outstanding issues remaining in this case.

Please charge any additional fees associated with this application to Deposit Account No. 06-0923.

Respectfully submitted,

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